IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 762 OF 2004.

Maharashtra Jeevan Pradhikaran
through its Member Secretary. ..Appellants.
& anr.

V/s.

M/s Lark Construction P.Ltd. ... Respondents.

Smt. Neeta Karnik for the appellants.
Shri P.S. Dani with Ms. Gauri Godse for the respondents.

CORAM: V.C.DAGA, J.

DATE : 30.9.2004.

JUDGMENT:

. This appeal is directed against the order dated 17.7.2004 passed below Ex. 39 in Spl.Civil Suit No.14 of 2003 by the Civil Judge, SD., Panvel, whereby original defendant Nos.1 and 2 were restrained from recovering and withholding the amount of Rs.14,36,730/-alleged to be due and payable to the plaintiff by the defendants against the work carried out at Chandrapur and Mangaon, with further direction to release the said amount in favour of the

plaintiff, subject to furnishing solvent surety within a period of two weeks. The parties to the appeal are hereinafter referred to in their original capacity.

Factual Backgrounds:

2. The factual backgrounds giving rise to the present appeal reveals that the respondent No.1 is the original plaintiff; whereas appellants are defendant Nos.1 and 2. The respondent No.2 is the State of Maharashtra, represented by the Collector, Raigad and Principal Secretary, Water Supply and Sanitation,Mantralaya, Mumbai.

3. The plaintiff filed a suit for recovery of Rs. 98,42,283/- alleged to be the amount due and recoverable from the original defendants on account of work of providing, manufacturing and erecting Godbole Type Automatic Gates to strengthen Dehrung-Dam, Panvel Water Supply Scheme Stage IIIA, at Panvel, District Raigad. According to the plaintiff, the said work was awarded to it as per work- order dated 3.12.1998. The said work was to be completed within a period of 18 months expiring with 2.6.2000. The plaintiff claims it has executed part of the work, rest of the work could not be executed

due to non-cooperative attitude of the original defendant Nos. 1 and 2, the appellants herein. The plaintiff has, thus, set up money claim against them by way of suit in question.

3. An application for interim injunction (Ex.39) during the pendency of the suit came to be moved alleging that the plaintiff is also having a contract for work at Maharashtra Jeevan Pradhikaran, Chandrapur Division and on account of this contract the plaintiff has to recover Rs.25 lacs (appeox.). The plaintiff in the said application has admitted the claim recoverable on account of Chandrapur Division is totally different from the suit claim.

4. The plaintiff apprehended deduction to the tune of Rs. 14.36 lacs from the amount due and payable to the plaintiff. The plaintiff, therefore, moved an application for interim injunction to restrain defendant Nos. 1 and 2 from recovering any amount on account of alleged claim from the amounts payable to the plaintiff under different contracts.

5. On being summoned, the defendants appeared and filed reply to the said application seeking temporary injunction contending that the contract given to the contractor viz. the plaintiff for Dehrang-Dam- at

Panvel is altogether different and it has nothing to do with the contracts awarded to the plaintiff at Chandrapur Division and/or Mangaon Division. Defendants further contended that the suit in question has no inter-se connection with the works at Chandrapur and/or Mangaon Division and that the interim order in the nature of money decree cannot be passed at the interim stage of the suit.

6. The aforesaid submissions did not find favour with the trial Court. The trial Court, vide its order dated 17.7.2004 granted interim injunction in terms referred to in the opening part of this judgment. This order is the subject matter of challenge in the present appeal from order.

Submissions:

7. Ms.Neeta Karnik learned Counsel appearing for the original defendant Nos. 1 and 2/ appellants and Shri Dani learned Counsel appearing for the original plaintiff canvassed their rival submissions at length.

8. Ms. Karnik submitted that application for injunction under O.39 R 1 and 2 of the Code of Civil Procedure, could not have been entertained by the

trial Court. In her submission, the amount sought to be recovered under interim application could neither be said to be property in dispute in the suit, nor the same is threatened or intended to be removed or disposed of by any party to the suit. As such, in her submission, case sought to be made out in the interim application could not be said to be within the sweep of O.39 R 1 of C.P. C. She further submitted that even otherwise application in question could not be said to be within the fold of O.39 R.2 of C.P.C.since plaintiff was not seeking to restrain the defendants from committing breach of the contract involved in the suit. In her submission, both the contracts, viz. contract with respect to Chandrapur Dn and/or Mangaon Dn. and contract with respect to construction of Dehrang- dam at Panvel, involved in the suit in question are altogether different contracts, nothing to do with each other as such no application for interim application in the suit in question could have been moved by the plaintiff muchless entertained by the trial Court.

9. In the submission of Ms. Karnik, impugned order is nothing but an abuse of process of the Court on the part of the learned trial Judge. According to her, it is really surprising that the learned Judge of the trial Court found out a novel method of

granting money decree at the interim stage of the suit in the garb of interim order. She submitted that not only the trial Court could not have passed such order, but it was the duty of the trial Court to prevent such abuse of process of the Court at the instance of any litigant like the plaintiff. She also submitted that injunction is always granted in the aid of final relief. Injunction granted in this case could not be said to be in the aid of final relief. She, also at the cost of repetition, reiterated that question of recovery of the amounts sought to be injuncted by way of interim order did not arise from the suit claim. She, therefore, prayed for setting aside impugned order with heavy costs.

10. Per contra, Shri Dani, learned Counsel appearing for the plaintiffs, tried to justify the impugned order on the touchstone of section 151 of the C.P.C. He, during the course of hearing, virtually conceded that the trial Court could not have granted injunction under O. 39 R 1 & 2 of the C.P.C. He, therefore, found it convenient to justify the impugned order under section 151.

11. Shri Dani contended that there was no fetter on the powers of the trial Court to grant injunction

under section 151 of C.P.C. The said inherent powers can be exercised to do justice between the parties. He further submitted that inherent powers of the Court are very wide and not in any way controlled by the provisions of the Code.They are in addition to the powers specially conferred on the Court by the Code and the Courts are free to exercise them. Shri Dani further submitted that the trial Court was perfectly justified in granting impugned order. The view taken by the trial Court is a reasonable and possible view. Therefore, this Court should not interfere with the impugned order especially in appeal from order.

12. In rejoinder, Ms. Karnik submitted that the power under section 151 is not intended to enable a Court to confer a new right upon a party. The inherent power of a Court is in addition to and complementary to the powers expressly conferred upon it by other provisions of the Code. She further submitted that at no point of time inherent power of the Court was invoked by the plaintiff, nor the Court has exercised such power conferred upon it while granting temporary injunction. She submitted that nothing is to be found in the impugned order to show that the Court has granted injunction in exercise of the powers under section 151. In her submission, the

justification sought to be canvassed to trace the power through section 151 is nothing but an afterthought. The trial Court did not exercise its inherent power to grant impugned order of interim injunction.

Issue:

13. The issue which arises for consideration is whether the trial Court was justified in granting interim injunction in the manner in which it has granted, and, that too in a suit wherein recovery of money is the only substantive relief.

Consideration:

14. Having heard rival parties, it is needless to mention that interim injunction is issued to maintain status-quo existing at the time of institution of the proceeding. The real point which has to be decided, when an application for stay or for temporary injunction is made, whether the subject-matter of the suit needs to be preserved. Interim injunction is not be granted by way of final relief at the interlocutory stage. In respect of relief not claimed in the main suit, no temporary injunction can be granted. The purpose of Order 39 is to preserve

and protect the interest in the property in suit and to protect the interest of the parties by preserving certain properties till final disposal of the case. It may be suit property, it may be a property which might form part of the security for repayment of a loan or a property on which a charge has been created. No injunction can be granted under O.39 R 1 & 2 where simple recovery of money is involved.

15. Having said so, let me consider the submissions advanced by Shri Dani, learned Counsel appearing for the respondents, based on section 151 of the C.P.C. It is no doubt true that inherent powers of the Court are very wide and are not controlled by any provisions of the Code. But they are in addition to the powers specially conferred upon by the Code. Exercise of powers under section 151 of the Code can be invoked to do justice between the parties without infringing and overreaching the specific provisions of law or provisions of the Civil Procedure Code. If exercise of such power is likely to contravene the manner and method for which specific provisions have been enacted in the Civil Procedure Code, the Court would have to refrain from passing such order in exercise of its inherent powers. In otherwords, express provisions of law in the statute would by necessary implication exclude the exercise of

inherent powers in regard to that particular Act where specific remedy is available to the party in accordance with codified law. Passing orders under inherent powers in variation of such definite remedy is normally not permissible in law and that has been consistent view held by the various High Courts including the highest Court of the land. So, the inherent powers cannot be used to by-pass remedies available in law.

16. It is no doubt true that the Court can in appropriate cases (if interest of justice requires), grant injunction in exercise of its inherent powers in case, case is made out in this behalf. While exercising inherent powers the Court should not overlook statutory provisions of section 41 (h) of the Specific Relief Act, which clearly indicates that if any other effective remedy is available, no injunction is to be granted. It must be remembered that inherent powers cannot be invoked to nullify other statutory provisions as already observed hereinabove.

17. Some times, interim orders are necessary to protect the interest of the parties till rights of parties are adjudicated upon. The Courts can grant interim injunction in exercise of inherent powers

under Section 151 of the C.P.C., if no specific provision under the Code or Act is available. However, while granting such interim order it should always be born in mind that it is granted in the aid of final relief. If final relief is not available to the person seeking interim relief, then no interim relief can be granted in his favour. The Apex Court in the case of **Cotton Corporation of India vs. United Industrial Bank, AIR 1983 SC 1272** has held:

> ".... It is undisputable that temporary injunction is granted during the pendency of the proceeding so that while granting relief the Court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. **But power to grant temporary injunction was conferred** in **aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted**. In State of Orissa vs. Madan Gopal Rungta 1952 SCR 218 : (AIR 1952 SC 12) a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. **The Court said that an interim relief can be granted in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to** achieve which power to grant temporary relief is conferred, **it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted....."**

(emphasis supplied)

With the aforesaid parameters and principles of grant of injunction, let me turn to the facts and circumstances of the case in hand to examine the legality and validity of the impugned order granting injunction in favour of the plaintiff vide impugned order dated 17.7.2004.

18. The impugned order would show that injunction is granted with respect to the claim relating to the alleged work carried out at Chandrapur Mangaon Division. The claim in the suit has nothing to do with the said contracts. In the circumstances, interim relief granted by the trial Court cannot be said to be in the aid of final relief. In the suit what is being prayed for is recovery of Rs. 98.42,283/- and permanent injunction restraining defendant Nos. 1 to 3 from demanding extension of bank guarantee from the plaintiff. The prayer for interim relief does not have any connection with the suit claim. Claim for interim relief in the present case, cannot be said to be relief in aid of final relief. Thus, Ms. Karnik is perfectly justified in criticising the order of the trial Court that the trial Court had adopted novel method of granting

final relief while granting interim relief. Para 3 of the operative part of the impugned order directs the defendant Nos. 1 and 2 - appellants herein to release an amount of Rs. 14,36.730/-, which is nothing but in the nature of money decree at the interim stage of the suit. It is beyond comprehension that when suit is still pending for trial, the trial Court, at this stage of the suit, could grant such interim injunction to release part of the money claim involved in the suit. The impugned order, therefore, is nothing but an abuse of process of the Court by the Judge of the trial Court himself. In the circumstances, impugned order is unsustainable and the same is liable to be quashed and set aside. The same cannot be justified on any count whatsoever.

11. In the result, impugned order dated 17.7.2004 passed below Ex.39 by the trial Court is set aside. Appeal is allowed with costs quantified in the sum of Rs. 5,000/- (Five thousand) which the trial Court shall recover from the plaintiff for being paid to the appellants-defendant Nos. 1 and 2.